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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,552	06/13/2005	Klaus Grohe	D4700-00396	5070
8933	7590	06/12/2007	EXAMINER	
DUANE MORRIS, LLP			MAHONE, KRISTIE ANNETTE	
IP DEPARTMENT			ART UNIT	PAPER NUMBER
30 SOUTH 17TH STREET			3751	
PHILADELPHIA, PA 19103-4196				

MAIL DATE DELIVERY MODE
06/12/2007 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/538,552	GROHE, KLAUS	
	Examiner	Art Unit	
	Kristie A. Mahone	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 March 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 2,11,16 and 17 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-10 and 12-15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 3/29/07 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on March 29, 2007. These drawings are acceptable.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **water conduit** recited in claim 13 must be shown or the feature canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, and 3-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 is unclear as to whether the "shower head" (lines 7 and 10) is intended to be part of the claimed combination since the wherein clause at lines 10-12 recites functional implications pertaining thereto¹, but no positive structural antecedent basis for such shower head and hose have been defined; i.e. the claim does not recite a combination "comprising" or "including" a shower head and hose.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

¹ "the show head is supplied with water by a hose" [emphasis added]

Art Unit: 3751

2. Claims 1-8, 10, 12-15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gransow et al. (6,442,775).

Regarding claim 1, Gransow et al disclose an adjustable support for a shower comprising: a mounting fixture (1); an arm (2); a receptacle (22) for a shower head (e.g. 4a) arranged in the vicinity of the far end of the arm; and at least one additional shower fixture (4b) attached to the arm. (Figs 2, & 17-18 showing adjustability). The receptacle is configured such that the showed is detachable. (See Figs 6-7). The shower head is supplied with water via a hose (50); and the additional shower fixture (4b) is supplied with water "independently" of the shower head (4a); i.e. 4b does not rely on 4a for its supply of water. (Fig. 3).

Regarding Claims 3-4, Gransow's arm (2) is a length of hollow profiled stock; i.e. 2 is a tube (Col 1. at 60-61). Gransow's support has a "channel" (interior of 2) passing though the arm leading to the additional shower fixture (4b).

Regarding Claims 5-8 and 10, as shown in Figure 2, Gransow's additional shower fixture (4b) is arranged between the mount (1) and the far end of the arm. The jet exiting such additional shower fixture is adjustable; i.e. 4b pivots about axis 400 and the arm pivots about axis 10. The additional shower fixture is mounted on a side of the arm 2 (i.e. at slots 22) so as to be on the underside of the arm (See also Fig. 1). Furthermore, Gransow's additional shower fixture appears to be non-detachable, at least in normal use.

With respect to claim 12, Gransow's arm (2) is pivotable relative to the mounting fixture (1) about a horizontal axis (10), orthogonal to the longitudinal axis of the arm (See Fig. 2).

With respect to claim 13, a water conduit (110) passes a pivotable connection of the arm to the mounting fixture. (Col. 4. lines 6-26; Fig 9 at 11a, 114a)

Regarding claims 14-15, Gransow's arm is configured in the form of a fork; i.e. it has a split. (Fig. 2). Further, the additional shower fixture (4b) is arranged on an "outer face" of the tine of the fork. Looking at the arm from the location designated as 10 in. Figure 2, the surface where 4b engages with arm (2) is deemed an "outer face" because such surface is the second face of the arm that the eye contacts.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being obvious over Gransow et al. (as discussed *supra*). Even though Gransow et al. does not specifically include several additional shower fixtures, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to incorporate several additional shower fixtures to enhance the device's suitability for its intended use; (i.e. a divergent array of jet sprays), especially since Applicant has not disclosed that

more than one additional shower fixture provides any further advantage, is used for a particular purpose, or solves a stated problem.

Response to Amendment

4. Applicant's cancellation of claims 2,16, and 17 moots the rejections thereto. Applicant's cancellation of claim overcomes the objection to the Drawings made a p. 2 of the Action, for failure to show the features specified in the claim.
3. Applicant's addition of reference numerals 4, 12, and 13 to the Drawings overcomes the rejection under 37 C.F.R. 1.84.
5. Applicant's amendment, filed on 3/29/07, is sufficient to overcome the rejections to claims 12 and 13 under 112,2nd made in the prior Action.² (p.3). However, the amendment to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or to overcome the rejections as discussed above.

Response to Arguments

4. Applicant's arguments, see pgs 5-6, filed 3/29/07, with respect to the objections to the drawings for failure to show the cited features of claims 2,9, and12 have been fully considered and are persuasive. Accordingly, the objection to the drawings with respect to the features of those claims is withdrawn.
5. Applicants arguments, see pages 6-7, regarding the indefiniteness of original claims 2,16, and 17, have been fully considered, but are not persuasive. Applicant

² mailed 11/01/06

submits that claim 1 (at lines 1 and 5), provides clear antecedence for the recitation "the shower head. Examiner can not agree. A shower head is not positively recited in the claims. To be sure, the preamble recites "a shower support for a shower head;" and line 5 recites a "receptacle for showerhead.

6. Applicant's arguments, see pages 8-10, with respect to the Gransow reference have been fully considered. However, they are not deemed persuasive.

Applicant first submits that Gransow reference fails to teach an additional shower fixture which is "supplied with water **independently** of the shower head" have been fully considered. The features upon which applicant relies in the argument (i.e., "there are independent supplies of water to the shower head versus the additional fixture") are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner is of the position that additional shower fixture 4b is supplied with water "independently" of shower head 4a inasmuch as it does not depend upon the latter for its supply of water.

Applicant also submits that the Gransow reference fails to show a receptacle configured such that the shower head is "detachable." Such limitation is met by Gransow because shower head 4a may be detached from receptacle 22, such as in instances where the water supply is shutoff (See Fig. 6-7, note the o-ring (42) connection between shower head and receptacle 22).

Applicant further submits that there would be no incentive to modify Gransow with "several" additional shower fixtures, it is noted that Gransow expressly teaches the

use an additional shower fixture; e.g. 4b. Although Gransow does not specify several such additional shower fixtures, such duplication/modification would have been obvious (as discussed *supra*), to enhance the devices suitability for the intended use.

7. Applicant's arguments, see page 9, that the Mueller fails to teach and adjustable arm, have been fully considered, but they are not found persuasive. Applicant's attention is directed to Figures 1 and 3. As noted in the previous Office Action, portion 20 defines and arm, which is "adjustable" to the extent that it can be moved, translated, about the supply pipe via threading 76. Nevertheless, such arguments are moot in view of Applicant's cancellation of claims 11 and 16, the rejection of the remaining claims under 35 U.S.C. 102(b).

Conclusion

6. Applicant's amendment necessitated the revised grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie A. Mahone whose telephone number is (571) 272-3680. The examiner can normally be reached on Monday -Friday 8:30A.M-5 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kristie A Mahone
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Art Unit 3751



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